IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 24TH AUGUST 2007 / 2ND BHADRA 1929

Crl.MC.No. 1973 of 2007()

CC.128/2007 of CHIEF JUDICIAL MAGISTRATE COURT, MANJERI

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PETITIONER: COMPLAINANT:

K.GEETHA, D/O.NEELAKANDAN MOOSAD,
BRANCH MANAGER, MANJERI CO-OPERATIVE URBAN
BANK LTD., MANJERI, MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR
SRI.JIJO PAUL
SMT.DEEPTHI S.MENON
SRI.ABRAHAM SAMSON
SMT.M.T.SHEEBA
SRI.P.A.RAJESH

RESPONDENTS: STATE;

THE STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI-31.

BY PUBLIC PROSECUTOR SRI. M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 24/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 1973 of 2007

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Dated this the 24th day of August, 2007

O R D E R

Sobriety and equanimity must be the hallmarks of a judicial personality. The incumbent occupying the seat of the Judge must be conscious of the great aspirations of the polity from the Chair. The divinity or sublimity are the prime expectation from the judicial personality. Even the worst of causes cannot and should not ruffle the poise and restraint of the judicial functionary. Every one - even the worst offender - must leave the Court with the satisfaction that he did get a fair deal from the court. Every justice functionary must be alertly conscious of this burden of responsibility/expectation on his shoulders.

2. The petitioner laments that she was not able to see such lofty idealism translated into actual performance in her case. Her grievance, legitimate as it appears to me, prompts me to write this detailed order, though relief is already granted to her by virtue of the interlocutory order which was passed when this Crl.M.C. was moved emergently on 19.6.2007.

3. A private complaint was filed by a Co-operative Urban Bank, represented by the petitioner, its Manager. In the complaint allegations were raised against six accused persons. It was alleged that they had committed offences punishable, inter alia, under Sections 120B and 420 r/w. 34 I.P.C. The learned Chief Judicial Magistrate appears to have alertly perceived the need for immediate consideration and disposal of the said private complaint. The private complaint was brought to termination by an order of discharge under Section 245(1) Cr.P.C. by order dt. 29.5.07 in C.C.No. 128 of 2007. That order of discharge is now challenged before this Court and Crl.R.P.No.2653 of 2007 is pending.

4. While passing the said order dt. 29.5.2007, the learned Chief Judicial Magistrate issued notice to the complainant Bank under Section 250 Cr.P.C. to show cause why an order directing payment of compensation to the accused should not be passed. That petition was also taken up with expedition and order dt. 14.6.2007 was passed by the learned Chief Judicial Magistrate directing payment of a total amount of Rs.25,000/- to accused 3 to 6. Default sentence was also imposed.

5. That order is again challenged before this Court by the complainant bank by filing Crl.R.P. No. 2655 of 2007. That revision petition is also pending now.

6. While passing the order dt.14.6.2007 under Section 250 Cr.P.C., a direction was issued in the order sheet that payment must be made on 15.6.2007. There was a further direction that the default sentence must be undergone by the person who represented the bank as its Manager, viz. the petitioner herein. On 15.6.2007 there was allegedly no representation before the learned Chief Judicial Magistrate and the case was posted to 16.6.2007. On that day, a warrant of arrest was issued against the petitioner as the amount had not been paid. This was issued to compel her to undergo the default sentence. The matter came up for hearing on 18.6.2007. The petitioner is aggrieved primarily in this Crl.M.C. of what happened on 18.6.2007. According to the petitioner, even the direction on 14.6.07 to pay the amount on 15.6.07 and the posting of the case to 16.6.07 and 18.6.07 on quick succession was unjust, improper and incorrect. Be that as it may, I propose to consider only what transpired on 18.6.2007.

7. On 18.6.2007, the warrant issued against the petitioner was returned unexecuted. The case was also posted to that date. It appears that the learned Chief Judicial Magistrate without and before disposing of the case, issued a direction to re-issue the warrant. On the same day, the petitioner had filed C.M.P. 8453 of 2007. I extract the said petition and the order passed by the learned Magistrate below:

PETITION IN C.M.P. 8453 OF 2007

"PETITION filed for and on behalf of the Complainant in the above u/s.70(2) Cr.P.C.; 250(7) Cr.P.C.

1) This Hon'ble Court was pleased to discharge the accused in the above as well as to order the complainant to pay compensation u/s. 250 Cr.P.C. of Rs.5,000/- each to A3, A4, A5 and Rs.10,000/- to A6.

2) The Certified copy of the order has been applied for on 16.6.07 vide C.A.

3) However in view of the fact that this Hon'ble Court was pleased to order NBW to the complainant on 16.6.07 the complainant is remitting the entire amount of Rs.25,000/- before this Hon'ble Court today as per Section 250(7) Cr.P.C.

4) In view of the above, it is prayed that the NBW issued to complainant may be cancelled/withdrawn."

(emphasis supplied)

ORDER IN CMP 8453/07 DT. 18.6.2007

18.6.2007:

Petition is filed by Advocate ..... and represented in court by another counsel. The party against whom the warrant is issued has not made any prayer to recall the NBW. It is the party and not the counsel to pray for withdrawal or recalling of the NBW. When NBW is ordered without that party present in court the warrant cannot be recalled. The prayer now made by the counsel is to recall the NBW in the absence of the person against whom warrant is issued. Hence petition is dismissed.

Sd/- Chief Judicial Magistrate."

8. It is the case of the petitioner that the learned Chief Judicial Magistrate vindictively wanted the warrant of arrest to be executed against the petitioner, a woman, by the end of the day and sent a policeman to execute the warrant on 18.6.07 itself, notwithstanding the filing of the above petition. In the course of the day the amount was remitted and a memo dt. 18.6.07 was filed in court also.

9. According to the petitioner, she was not informed that the proceedings were closed on 18.6.07 and this obliged her to rush to this Court on 19.6.07 with a prayer that the proceedings may be quashed. An interim direction was sought that no further steps may be taken to execute the NBW. That interim order was granted also on 19.6.2007.

10. The learned counsel for the petitioner submits that the learned Chief Judicial Magistrate had behaved in a vindictive manner against the petitioner. According to the petitioner, the learned Magistrate did not act fairly as expected from a senior judicial functionary. According to the petitioner, the learned Magistrate was “after the blood of the petitioner”. Counsel submits that the sequence of events must convey eloquently that the petitioner was not dealt with fairly and reasonably by the learned Chief Judicial Magistrate.

11. Remarks of the learned Chief Judicial Magistrate was called for. I note that the remarks of the learned Magistrate ends as follows:

Some General Remarks

> From the very beginning itself the Advocate for the complainant's behaviour in court was very unpleasant and even contemptuous. He behaved in such a manner that court shall not express any view against his stand and by that his prestige is affected.
>
> Adv. ..... has only this case before me. I genuinely doubt that the Crl.M.C. is a collusive affair by Adv. ..... and Adv. ..... who appeared in the Crl.M.C. and is without the knowledge of the petitioner. I doubt that the petitioner is misguided and obtaining her signatures making her to believe that it is for some other purposes, they filed the Crl.M.C.
>
> Copy of the NBW returned unexecuted is produced as Annexure I.
>
> In these circumstances I request that a detailed enquiry may be conducted in this case and to initiate action against the person who is found at fault including myself if I am at fault or against the complainant if she is at fault or against the Advocates if they are at fault."
>
> (emphasis supplied)

12. It is not necessary to embark on a detailed discussion. I am certainly satisfied that it was not proper for the learned Magistrate to re-issue the warrant on 18.6.07 when Crl.M.P. No. 8453 of 2007 was filed and pending, wherein it was specifically informed that the petitioner intends to remit the amount. The reasons shown for the dismissal of C.M.P. 8453 of

2007, I must say, are far from satisfactory. I am not at all satisfied that the course followed by the learned Chief Judicial Magistrate on 18.6.2007 was proper or correct. The nature of the remarks offered a portion of which is extracted above also falls significantly short of the sublimity that one expects from a senior justice functionary.

13. I accept the request of the learned Magistrate himself. I am satisfied that the matter must be brought to the notice of the Judge in charge of the District to decide whether any detailed enquiry deserves to be conducted.

14. With the above observations this Crl.M.C. is dismissed as unnecessary now. It is directed that the matter shall be placed before the Judge in charge of the District by the Registrar General for information and action, if any, necessary.

(R. BASANT)
Judge

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